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Supreme Court of the United States

October Term, 1976**No. 76-1475**

LAMB ENTERPRISES, INC., EDWARD O. LAMB, et al.,*Petitioners,***vs.****HONORABLE GEORGE N. KIROFF, et al.,****and RUSSELL MORTON BROWN,***Respondents.*

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

RESPONDENTS' BRIEF IN OPPOSITION

T. SCOTT JOHNSTON**JOHN CZARNECKI****HAYWARD, COOPER, STRAUB,****CRAMER & Co., L.P.A.****500 Toledo Legal Building****416 N. Erie Street****Toledo, Ohio 43624****RICHARD S. WALINSKI****5415 C-7 York Terrace Drive****Columbus, Ohio 43227***Counsel for Respondents*

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OPINIONS BELOW

The judgment of the United States District Court for the Northern District of Ohio, Western Division is published at *Lamb Enterprises, Inc., et al. v. Kiroff*, 399 F. Supp. 409 (D.C. Ohio 1975).

The judgment of the United States Court of Appeals for the Sixth Circuit is published at *Lamb Enterprises, Inc., et al. v. Kiroff*, 549 F.2d 1052 (6th Cir. 1977).

QUESTIONS PRESENTED

1. Whether the Full Faith and Credit clause of the United States Constitution, U.S. Const. Art. IV, §1, requires that a judgment, based on a statute of limitations in a jurisdiction in which the statute of limitations bars only the remedy, be given the effect in other jurisdictions as also extinguishing the underlying right?

2. Whether the standards for injunctive relief announced in *Younger v. Harris*, 401 U.S. 37 (1971), apply when federal courts are asked to intervene in wholly civil state actions?

STATEMENT OF THE CASE

On April 28, 1959, Russell Morton Brown filed an action in the Common Pleas Court of Lucas County, Ohio against Edward G. Lamb and others. The suit was for attorney's fees which Brown claimed for services rendered over the five year period from 1953 through 1957. Brown had represented Lamb in the proceedings before the Federal Communications Commission that were prompted by Lamb's alleged affiliation with the Communist Party.

A motion to strike the petition filed in the Common Pleas Court was granted. The Court of Appeals reversed. The Supreme Court of Ohio declined to review, and the case was remanded to the Common Pleas Court for further proceedings and trial. The defense filed other motions after the remand. Before these motions were ruled upon, on May 21, 1963, Brown filed a second action in the District Court for the District of Columbia demanding judgment for the same attorney's fees which were the subject matter of the action pending in Ohio. Thereafter, the Common Pleas Court *sua sponte* placed the Ohio action on the inactive list without deciding the defendant's motions.

The District of Columbia lawsuit proceeded to trial where the jury returned a verdict for Brown in the amount of Four Hundred Thousand Dollars (\$400,000.00). The court, however, granted the defense motion for a judgment n.o.v. on the ground that the District of Columbia action had not been filed within the District of Columbia's three (3) year statute of limitations. Brown appealed the adverse judgment, but the United States Court of Appeals for the District of Columbia affirmed the judgment n.o.v. suggesting that Brown could pursue his Ohio action. *Brown v. Lamb*, 414 F.2d 1210 (D.C. Cir. 1969). This Court denied certiorari. 397 U.S. 907 (1970).

While the District of Columbia action was pending, the Ohio action was inadvertently dismissed for want of prosecution. The erroneous dismissal was remedied, and the case was returned to the active list. The defense moved for a reconsideration of the reinstatement. A visiting judge ruled that the petition should indeed have been dismissed, not only for want of prosecution but also because the District of Columbia judgment was *res judicata* on the claims pending in Ohio. *Brown v. Lamb*, 36 Ohio St. 2d 8, 10 (1973). The Common Pleas Court therefore again dismissed the petition. Brown sought review of that order, but the Court of Appeals this time affirmed. The Supreme Court of Ohio reversed the judgment saying that the dismissal was an "erroneous denial of a day in court to the appellant." *Brown v. Lamb*, 36 Ohio St. 2d 8 (1973). The case was again remanded to the Common Pleas Court of Lucas County, Ohio, for trial. Upon remand, Brown filed an Amended Complaint joining additional parties. Lamb, among others, filed an Answer to the Amended Complaint.

Lamb and the other state court defendants then initiated an action in the United States District Court for the Northern District of Ohio, Western Division, pursuant to 42 U.S.C. §1983 to enjoin further proceedings in the

state court. The action, brought against various officials of the Common Pleas Court of Ohio as well as Brown, complained that further prosecution of the state action would violate the full faith and credit to be given to the District of Columbia judgment. The district court issued a permanent injunction against continuing with the state court action. *Lamb Enterprises, Inc., et al. v. Kiroff*, 399 F. Supp. 409 (D.C. Ohio 1975). The United States Court of Appeals for the Sixth Circuit vacated the permanent injunction and reversed the judgment. *Lamb Enterprises, Inc., et al. v. Kiroff*, 549 F.2d 1052 (6th Cir. 1977). The case is now before this Court.

ARGUMENT

I. CERTIORARI OUGHT NOT BE GRANTED. THE DISTRICT OF COLUMBIA JUDGMENT HAS NEVER BEEN DENIED FULL FAITH AND CREDIT BY THE OHIO COURTS.

A. Petitioners' first and second arguments for supporting a grant of certiorari are merely two prongs of the same argument: (a) federal courts have authority under 28 U.S.C. §2283 to enjoin state proceedings that threaten to deny full faith and credit to a valid federal judgment, and (b) the lower court's refusal to enjoin the civil action pending in state court denied full faith and credit to the District of Columbia judgment. The Court ought not grant certiorari on either ground because the record simply does not support formulation of that issue. The District of Columbia judgment was given all of the faith and credit to which it is entitled.

Under the Full Faith and Credit clause, a judgment is conclusive of the rights of the parties in every other court as in that court where the judgment was rendered.

Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 439 (1943). Conversely, no greater effect may be given a judgment than is given it in the jurisdiction where rendered. *Board of Public Works v. Columbia College*, 17 Wall. (84 U.S.) 521 (1873); *Robertson v. Pickrell*, 109 U.S. 608, 610-11 (1883).

The District of Columbia judgment supposed by petitioners to have been denied full faith and credit is the 1967 judgment n.o.v. entered in favor of Lamb. The judgment was entered on the ground that the action filed in the District of Columbia was commenced after expiration of the District of Columbia's three (3) year statute of limitations. *Brown v. Lamb*, 414 F.2d 1210, 1211 (D.C. Cir. 1969), cert. denied, 397 U.S. 907 (1970).

The question of what effect is to be given the judgment is a matter of local law. See *Durfee v. Duke*, 375 U.S. 108, 109-11 (1963); cf. *Angel v. Bullington*, 330 U.S. 183, 190-91 (1947); *Oklahoma Packing Co. v. Oklahoma G. & E. Co.*, 309 U.S. 4, 8 (1939). This includes the effect to be given the statute of limitations of the jurisdiction. *Bell v. Morrison*, 26 U.S. (1 Pet.) 265 (1828). In the District of Columbia, "(t)he statute of limitations operates to extinguish the remedy, . . . but it does not extinguish [the] right." *Cafritz v. Koslow*, 167 F.2d 749, 751 (D.C. Cir. 1948). See also *Talbott v. Hill*, 261 F. 244 (D.C. Cir. 1920); *Hall v. District of Columbia*, 47 App. D.C. 552 (D.C. Cir. 1918); cf. *Universal Airlines v. Eastern Airlines*, 188 F.2d 993, 996 (D.C. Cir. 1951). As a result, running of the statute of limitations in the District of Columbia does not bar an action on the same claim in another jurisdiction where the statute of limitations has not run. *Hartmann v. Time, Inc.*, 166 F.2d 127, 138-39 (3rd Cir. 1948). Accord, *Fricks v. Carroll*, 368 F.2d 329 (5th Cir. 1966). See generally, *Brown v. Lamb*, 414 F.2d 1210

(D.C. Cir. 1969), *cert. denied*, 397 U.S. 907 (1970); *Brown v. Lamb*, 36 Ohio St. 2d 8 (1973).

Because the law is clear on what effect the District of Columbia gives its statute of limitations, the record in this case simply does not contain the predicate necessary to support petitioners' contention that full faith and credit was denied the judgment of the District of Columbia Court.

B. Further, this Court ought not grant certiorari to consider whether the Full Faith and Credit clause was infringed because the issue of whether the District of Columbia judgment was *res judicata* of the action pending in Ohio was conclusively and finally decided between these same parties by the Supreme Court of Ohio in *Brown v. Lamb*, 36 Ohio St. 2d 8 (1973). After the Supreme Court of Ohio held that the District of Columbia judgment was not *res judicata* of the action pending in Ohio, petitioners declined their option to seek review before this Court of that ruling, at least to the extent that it resolved the question of the credit to which the District of Columbia judgment is entitled. Petitioners' failure to seek review of that decision in this Court finally settled the constitutional issue between these parties. *Angel v. Bullington*, 330 U.S. 183 (1947).

II. THE COURT OUGHT NOT GRANT CERTIORARI TO CONSIDER THE QUESTION OF WHETHER THE STANDARDS ANNOUNCED IN YOUNGER V. HARRIS, 401 U.S. 37 (1971) APPLY TO WHOLLY CIVIL STATE ACTIONS BECAUSE THE RECORD DEMONSTRATES THAT THE COURT NEED NOT REACH THAT ISSUE.

A. Petitioners seek to set up a tension between the federalism as it underlies the Full Faith and Credit clause of the United States Constitution and federalism as it is served by the holding in *Younger v. Harris*, 401 U.S. 37 (1971). In this case the tension is specious because, as noted above, petitioners have never been denied full faith and credit. Hence, the holding by the United States Court of Appeals for the Sixth Circuit is wholly consistent with the result that would have been reached had the United States Court of Appeals for the Sixth Circuit addressed the question whether petitioners were denied full faith and credit.

B. Beyond the fact that the record does not support the tension petitioners seek to create, the Court ought not grant certiorari on the *Younger* issue because the Court would not be likely ever to reach the issue of whether *Younger's* standards should be applied to wholly civil actions. It is the policy of this Court to decide cases on the narrowest grounds and thus to avoid whenever possible reaching questions of constitutional magnitude. Petitioner seeks to have the Court consider whether *Younger's* stringent standards should be applied to actions for injunctive relief against pending civil actions. Petitioners, however, are unable to demonstrate that even the ordinary equitable standards for issuance of an injunction can be met in this case. The United States Court of Appeals for the Sixth Circuit so suggested in discussing the question of whether there existed adequate remedies at law. *Lamb Enterprises, Inc., et al. v. Kiroff*, 549 F.2d 1052, 1058 (6th Cir. 1977).

CONCLUSION

Respondents respectfully suggest that this Court deny certiorari.

T. SCOTT JOHNSTON
JOHN CZARNECKI
HAYWARD, COOPER, STRAUB,
CRAMER & Co., L.P.A.
500 Toledo Legal Building
416 N. Erie Street
Toledo, Ohio 43624
Telephone: (419) 255-1016

RICHARD S. WALINSKI
5415 C-7 York Terrace Drive
Columbus, Ohio 43227
Telephone: (614) 868-8626
Counsel for Respondents